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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Iowa Network Access Division Tariff FCC No. 1
WC Docket No. 18-60; Transmittal No. 36**

Dear Ms. Dortch:

I write on behalf of South Dakota Network, LLC (“SDN”) regarding the above-referenced proceeding. As the Commission is aware, SDN is a provider of Centralized Equal Access Service (“CEA”) in the State of South Dakota, and has provided CEA service pursuant to both the Commission’s Section 214 authorization and the authorization of the State of South Dakota.¹

Though SDN is a CEA provider, like Aureon, there are significant differences between these two carriers in terms of size, network design, and management policies. Despite these differences, and despite the fact that SDN’s CEA tariff is not subject to a pending investigation (and thus SDN has not had the opportunity to defend its tariff), SDN is concerned about the Aureon tariff investigation and, particularly, about how the resolution of questions regarding access tariff benchmarking in this proceeding might affect SDN.

¹ *In re the Application of SDCEA, Inc.*, 5 FCC Rcd 6987 (FCC 1990); *In the Matter of the Application of South Dakota Network, Inc. and SDCEA, Inc. for Permission to Construct Centralized Equal Access Facilities*, Docket F-3860, Amended Order Granting Construction Permit and Approving Tariff (SDPUC 1991).

The Wireline Competition Bureau's Order designating issues for investigation specifically invites discussion on whether CenturyLink's rates should provide the benchmark under Section 61.26 of the Commission's Rules.² SDN submits that CenturyLink is not the correct ILEC from which to benchmark CEA service. This conclusion flows from the Commission's own rules and precedent, and from the quite different operating characteristics of SDN and CenturyLink in South Dakota. Indeed, as is demonstrated later, such benchmarking would imperil SDN's viability as a CEA provider, while providing wildly unintended consequences in the Aureon case.

SDN Is Not A CLEC

As a threshold matter, SDN does not agree that Aureon was lawfully deemed a CLEC in the Commission's *Liability Order*.³ When the Commission found Aureon liable in AT&T's complaint proceeding, it specifically held that "Aureon is a CLEC"⁴ and subsequently initiated the instant investigation because it lacked an adequate record to determine the correct tariffing benchmark against this finding.⁵ Neither SDN nor Aureon has ever been considered a non-dominant carrier (a classification earlier extended to CLECs). Instead, these carriers were authorized under Section 214 of the Act – applicable to dominant carriers – and have been treated as fully subject carriers under Title II for the history of their existence. The Commission has recently reaffirmed their dominant status.⁶ Importantly, the Commission found that CEA providers do not provide service to end users. That is still the case, and SDN agrees with Aureon's arguments here in its Surreply pleading against the CLEC classification,⁷ including administrative law requirements, stemming from an abrupt change in policy, which have been

² *In re: Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60; Transmittal No. 36, DA 18-395, released April 19, 2018 at ¶¶12-15.

³ *In re: AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding No. 17-56, Memorandum Opinion and Order, released November 7, 2017.

⁴ *Id.* at ¶25.

⁵ *Id.* at ¶24.

⁶ *See In re: Technology Transitions*, 31 FCC Rcd. 8283 (FCC 2016) at fn. 43.

⁷ Surreply of Iowa Network Access Division d/b/a Aureon Network Services to AT&T Services, Inc.'s Surrebuttal, *In re: Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60 at p. 7 ("Surreply").

honored in the breach.⁸

CenturyLink's Tariff Should Not Be Used As A Benchmark

Assuming for argument's sake only that Aureon was properly classified as a CLEC, SDN respectfully submits that CenturyLink's tandem switching rates do not provide the correct benchmark for CEA switching. Aureon correctly analyzes controlling sections of the Act and the Commission's rules, and shows that CenturyLink could not meet the definition of a "competing ILEC" with respect to Aureon's service area, since those areas were already served by Aureon's subtending ILECs on the February 8, 1996 cut-off date established by the Act.⁹ The term is mutually exclusive and a contrary argument advanced by AT&T cannot be squared with the statute.¹⁰

Moreover, and as Aureon points out, CenturyLink's switches do not provide "the same access services" as Aureon's CEA service, and cannot therefore properly serve as a benchmark rate.¹¹ In this respect, CenturyLink's switches do not provide the same functionality as CEA service. SDN's CEA service is provided at its centralized tandem switch in Sioux Falls, via equal access software and hardware. As Aureon points out in its direct case, significant investment would be necessary for CenturyLink's switches to provide CEA services, and such investment is not currently reflected in CenturyLink's tandem switching rates.¹² In both cases, CenturyLink switches do not provide CEA services as provided by either SDN or Aureon – hence, it is not the "same" service, or even one which is functionally equivalent – and cannot serve as a benchmark.

Indeed, CenturyLink is not authorized to provide interstate CEA; only a handful of companies in the late 1980s received such authority. This lends strong support to the contention that the benchmark rate, were it to be applied at all, should at least be predicated upon the rates of the subtending ILECs covered by the section 214 authorizations themselves, if not the CEA providers' own cost-supported rates. The vast majority of those companies are members of the NECA access

⁸ *Id* at pp. 7-10.

⁹ 47 U.S.C. 251(h)(1) (defining the term "Incumbent local exchange carrier").

¹⁰ Surreply at pp. 44-49.

¹¹ *Id* at pp. 44-55.

¹² Surreply at p. 54.

service pools.

As a final note on this score, the Commission is urged to avoid a one-size fits all approach to application of any benchmark. The difference between the networks may well introduce unintended consequences. As earlier noted, SDN's interstate CEA traffic volumes constitute approximately 5% of Aureon's interstate CEA traffic. SDN believes the switching investment between the two companies is approximately the same.¹³ Given the significant difference in traffic volumes, the access rates of Aureon and SDN are quite different. As a result, SDN has calculated that the application of the CenturyLink switching rate as a benchmark rate to Aureon would yield a CEA rate approximately five times higher than Aureon's current calculated cost for switching, while SDN's switching rate would be cut in half – directly imperiling its viability, as it has no USF or other offsets.¹⁴ AT&T's argument leads to absurd results, and should accordingly be rejected.

The Bureau's Decision Should be Limited

Against this background, SDN urges the bureau to limit any Benchmark decisions to the facts surrounding Aureon's tariff, for the following reasons:

1. The networks are different. Aureon provides CEA transport and switching while SDN provides only CEA switching.
2. The traffic volumes are significantly different. Aureon has a much larger network in terms of subtending ILECs and has much more stimulated access traffic on its network. SDN has taken steps to remove such traffic from its network and based upon SDN's analysis it appears that SDN's interstate minutes are approximately 5% of Aureon's

¹³ It should be noted that SDN's CEA service consists of tandem switching only. SDN's subtending ILECs provide transport into the centralized tandem in Sioux Falls, South Dakota. Aureon, on the other hand, offers CEA access by bundling both switching and transport functions into a single rate.

¹⁴ SDN has calculated Aureon's switching rate based upon switching revenue requirements as reported in its last Section 61.38 cost support filing, by dividing those values by the demand minutes also reported in that filing. SDN realizes that this calculated rate does not appear as a separate element in Aureon's FCC tariff; instead, it is added to Aureon's transport rate. SDN's rate for CEA switching – its only CEA element – is taken directly from its FCC tariff.

interstate minutes.¹⁵

3. SDN's tariff has not been suspended and, unlike Aureon, SDN has not had the same procedural opportunities to defend its tariff.

SDN accordingly requests that any order concluding the Bureau's April 19, 2018 Order Designating Issues for Investigation contain the following language: "This Order applies only to Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 36 (February 22, 2018) and any related tariffs of the company and at issue in this investigation. This Order does not apply to any other CEA carrier, or other CEA carriers' interstate tariff on file with this Commission."

Sincerely,



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¹⁵ SDN recently described Aureon as having promoted access stimulation. *See*, South Dakota Network, LLC Notice of Ex Parte, WC Docket No. 18-60, 18-155, filed July 13, 2018. It would be more accurate, particularly in light of Aureon's recent comments calling for the end of Commission policies tolerating access stimulation, to say that while SDN has removed stimulated traffic from its network, Aureon has not. *See*, Comments of Aureon, WC Docket No. 18-155, filed July 20, 2018.